IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 987 of 1997

Date of Decision: 09-12-2004

GSRTC
Versus
HASRATIBEN KHATUN

Coram:
The Hon'ble Mr. Justice Bhawani Singh, Chief Justice
The Hon'ble Mr. Justice H.K. Rathod, Judge

Whether approved for reporting:

For Appellant:

MR DIPEN A DESAI

For Respondents:

MR BK OZA

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

1. Through this Appeal, judgment of the Motor Accident Claims Tribunal (Main), Bhavnagar, in Motor Accident Claim Petition No.41 of 1995 dated 19-11-1996 has been challenged.

Whether Reporters of Local Papers may be allowed to see the Judgment?

2. Mohammad Yamin Vahid (deceased) was travelling by Ambassador car ATK 7045 from Bhavnagar to Alang on 07-09-1994. After passing Trapaj at 12.30 (noon), the accident took place. Truck bearing Registration No.GTF 3997 was ahead of the Ambassador car, State Transport bus bearing Registration No.GJ 1 T 9551, coming from opposite direction at excessive speed driven by its driver rashly and negligently, collided with the front portion of the Truck, as a result the Truck turned turtle, thereafter, the bus dashed the Ambassador car, in which deceased was travelling. Deceased suffered serious injuries, taken to Sir T.Hospital at Bhavnagar, but succumbed to injuries. Deceased was 38 year old at the time of accident. He was hale and hearty, doing business of selling old oil engines under the name of Yamin and Sons, Jansath (U.P.). He was holder of CST and UPST numbers for sales. His earning capacity was likely to improve to a great extent, while at that time, he was earning Rs.3,400 per month. He was the sole bread earner of the family. He left behind his wife and six minor children. He was contributing Rs.3,000/- per month. But for the accident, he would have lived 20 years, enhanced his income and developed business. Total compensation of Rs.7,70,000/- is claimed under various heads on the ground that the bus was driven rashly and negligently causing the accident, therefore, the respondents are being held liable for payment of compensation. Gujarat State Road Transport Corporation has filed written statement in this case (Exh.12). It is stated that the driver of the bus was not negligent in driving the bus, rather it was the driver of the truck, who caused the accident and failure to join the owner, driver and Insurance Company of the Truck as parties to the case is fatal.

3. On the pleadings of the parties, Claims Tribunal framed issues (Exh.14). Claimant appeared as witness to prove the accident and documents. Respondents have not led evidence. Driver of bus or cleaner could not throw light on the accident how it took place, particularly the defence raised by the respondents. From the other side it has been proved that the bus was being driven in the middle of the road, it struck the public carrier, as a

result it fell on the kachha portion of the road, 10' away from the point of accident. Thereafter, the bus hit the ambassador car causing damage to the extent of Rs.40,000/- and strode to the wrong side. These facts clearly establish the rash and negligent driving of the bus by its driver. It is he who caused the accident, but for his rashness and negligence, accident could not have taken place. We find no case of contributory negligence asserted by Shri Desai, learned counsel for the appellant. Therefore, the contention that owner, driver and Insurance Company of the Truck should have been impleaded as parties to the case is rejected, because impleadment is not necessary; it was the bus driver who caused the accident, and truck driver did not contribute to the same. Similarly, car driver did not contribute to the accident in any manner.

4. Second question is with regard to compensation and interest allowed by the Claims Tribunal. It was contended that excessive compensation has been awarded and interest is on the higher side. These submissions are opposed by Shri Oza, learned counsel for the claimants, stating that looking to the age, business carried on by the deceased, future prospects of the same, the compensation is not high, but low. Similarly, the interest awarded is just and proper. Giving consideration to the matter we find that the deceased was dealing in sale of oil engines; he was going to Alang, a ship breaking yard in the State of Gujarat to purchase the same for sale in Uttar Pradesh, where he was carrying on his business; he was trader having CST and UPST numbers; for the years 1987-88, 1988-89 and 1989-90, his income was Rs.55,000/-, Rs.1,05,000/- and 2,57,500/- respectively, and in 1989-90, he paid sales tax of Rs.22,660/-. This evidence clearly indicates that the deceased was a progressive businessman, and there was every chance of improvement of his business in the years to come. With this background, the Claims Tribunal has rightly assessed the income. Consequently, we are of the opinion that the assessment of compensation is just and proper, and multiplier is rather low. The interest allowed is 12%, in case the amount of award is deposited within six months, otherwise it is 15%. We agree with this conclusion of the Tribunal.

As a result of the aforesaid discussion, we find no merit in this Appeal, the same is dismissed. The compensation amount with interest be paid to the claimants as per the award of the Tribunal within two months, in case it is not already deposited with the Claims Tribunal. There shall be no order as to costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

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